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Supreme Court, U.S.
FILED
AUG 1 1997
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Case No. 96-1957

In The
Supreme Court of the United States

October Term, 1996

PAUL JENNINGS HILL

Petitioner,

vs.

STATE OF FLORIDA,

Respondent

CAPITAL CASE

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

REPLY ON MOTION FOR LEAVE TO FILE AMICI CURIÆ BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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COUNSEL FOR AMICI CURIAE

8 pp

QUESTIONS PRESENTED BY AMICI

1. Was Hill given faulty Farretta advisements, did not qualify to represent himself, and prejudiced within the meaning of *Sullivan v. Louisiana*, 113 S.Ct. 2078 (1993), by denial of a meaningful access to the courts to provide the following defenses:

> a. Based on exhaustive research on the use of the death penalty, the jury should have been instructed that the death penalty could be applied, if at all, only if the state demonstrated beyond a reasonable doubt that the state could not protect society by mere incarceration.
>
> b. Based on new research, the ruling in *Heath v. Alabama*, 474 U.S. 82 (1985) that dual sovereignty allows multiple punishment is inconsistent with the common law, and therefore Hill was denied an opportunity to show, if there is a basis, the death penalty was barred under the doctrine of double jeopardy.

2. In light of *Sullivan v. Louisiana*, 113 S.Ct. 2078 (1993), was it reasonable for the court below to refuse the defense of the right to use reasonable force, and deadly force if reasonable, in the defense of others, to wit the unborn, where, arguably, the unborn are members of posterity" as used in the Preamble of the Constitution, and therefore a person entitled to a defense?

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Case No. 96-1957

In The Supreme Court of the United States

October Term, 1996

PAUL JENNINGS HILL

Petitioner,

vs.

STATE OF FLORIDA,

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CAPITAL CASE

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

REPLY ON MOTION FOR LEAVE TO FILE AMICI CURIÆ BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

STATEMENT IN REPLY

Florida filed a response in opposition to The Friends' motion for leave to file an *amici curiæ* brief. The response raises 3 issues: Paul Hill does not want a hearing; *amici* add three issues, whether the state can be precluded from using the death penalty where mere incarceration can protect society, double jeopardy, and whether the unborn are persons in the constitutional sense. Response, p. 1, 2.

Florida claims the first two were never raised below, and therefore should not be permitted to be raised here. Response, p. 2. Florida is confused. What the *Amici* Brief did was support the Farretta Claims of the Petition by showing that there was other and further issues not raised below because of the Farretta error. This Court need not pass on the merits of the theories presented, but can certainly consider in context whether those issues indicate Hill gave a knowing and intelligent waiver, or whether remand to consider

those claims is warranted in light of the record made on the Farretta hearing.

Florida claims the issue of the unborn is an issue not raised below. The claim was clearly raised below. Petition to Appendix (PA), pp. A185-A197. Response, p. 2. Florida also claims the Florida Supreme declined to reach then cites the very portion of the opinion of the court that disposes of the issue. Response, p. 2. The trial court precluded Hill from presenting to the jury any argument on his views that the unborn are persons in the constitutional sense entitled to protection. PA, pp. A229-A230.

Florida also claims that the issue is not expressly mentioned in the petition. Response, p. 2. In fact, it is expressly stated. Petition, p. ii.

ARGUMENT IN REPLY

The court, regardless of who drafted it, liberally construes a pleading. *Hughes v. Rowe*, 449 U.S. 5, 14-16 (1980); *Zenith Radio v. Hazeltine Research*, 401 U.S. 321, 334-35 (1970). The statement of any question presented will be deemed to comprise every subsidiary question fairly included therein. The court will consider questions fairly included in the statement of issues. USSC, R. 14.1(a). In this context, *Farretta error*, whether there was a knowing and intelligent waiver, must be gleaned from the record, and should not necessarily be confined to a litmus test of how defendant responded. In reading the record, this Court should consider subsidiary issues of whether waiver, if any, was valid in light of the record which perhaps ought to have been made had Hill been competent.

Finally, Hill once again asked for stand-by counsel to assist, which was denied. PA, pp. A181-A183, A226-A228. The court simply asked, after denying the request, "Do you wish to still represent yourself?" PA, p. A-185.

Interrogation may continue after an **equivocal request for counsel**, however such questioning must be limited to **attempts to clarify** the request and must not coerce or in-

timidate a person into waiving rights. *Nash v. Estelle* (5th Cir., 1979) (*en banc*) 597 F.2d 513, cert. den. 444 U.S. 981; *United States v. Fouche*, 776 F.2d 1398 (9th Cir., 1985), 1404-05 (Fouche I); *United States v. Fouchel*, 833 F.2d 1284 (9th Cir., 1987) (Fouche II).), *distinguishing Thompson v. Wainwright*, 602 F.2d 768 (5th Cir. 1979) (Agent misrepresentations and prevarications); *United States v. Cherry*, 733 F.2d 1124 (5th Cir., 1984), *cert. den.* 107 S.Ct. 932 (1987) (Continued questioning without contacting officer suspect wanted; no new warnings); *United States v. Porter*, 764 F.2d 1 (1st Cir., 1985) (**Mere rereading of *Miranda* rights after equivocal request insufficient**). Under California law, once a defendant asserts his *Miranda Rights*, **there can be no subsequent relinquishment without counsel**. *People v. Pettingill*, 21 Cal.3d 231 (1978);[1] *Michigan v. Jackson*, 475 U.S. 625 (1986), 636. Based on the foregoing, it does not appear that the trial court met this standard of clarifying. It merely regurgitated the prior warnings.

Paraphrasing by analogy, an opinion of this court, we should not speculate on what the ultimate outcome should have been had the issues been raised, but at what process the defendant in fact got, and if he did not receive the process required for capital punnishment, reversial should be automatic. *Sullivan v. Louisiana*, 113 S.Ct. 2078 (1993). Whether the status of the unborn should be considered as part of the Farretta error, or independently, is not relevant. It was raised below and decided, and mentioned in the statement of issues. it should be considered. The *amici curiæ* brief assists the court in making a determination as to whether there is potential merit such that review is warranted.

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[1] Since Prop. 8, *Pettingill* has been somewhat watered down. Instead of a flat prohibition, it depends upon a totality of the circumstances. *People v. Warner* (1988) 203 Cal.App.3d 1122, 1131; *Michigan v. Mosley*, 423 U.S. 96, 101-104 (1975); *but see People v.* Boyer, 48 Cal.3d 247 (1989), 273, fn. 14.

Secondly, this Court in a long line of cases has held that the defendant in a capital case should be allowed all the help he can get. *Franklin v. Lynaugh*, 487 U.S. 164 (1988); *Hitchcock v. Dugger*, 481 U.S. 393 (1987); *Skipper v. South Carolina*, 476 U.S. 1 (1986); *Eddings v. Oklahoma*, 455 U.S. 104, 114 (1982); *Green v. Georgia*, 442 U.S. 95 (1979); *Lockett v. Ohio*, 438 U.S. 586 (1978); *Hunter v. Florida*, 416 U.S. 943 (1974). Allowing *amici curiæ* at this stage to assure there is full review of the issues is only fair in a capital case.

CONCLUSION

WHEREFORE, *Amici Curiæ* pray, for all of the reasons and arguments set forth herein, this court grant the *amici curiæ* motion for leave to file their brief, grant review, reverse the judgment, and remand for further proceedings not inconsistent with this court's opinion, and such other and further relief as the court deems just and proper under the circumstances.

Dated: July 30, 1997

Respectfully submitted,

JAMES JOSEPH LYNCH, JR.
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AMICUS CURIÆ THE FRIENDS OF PAUL JENNINGS HILL IN SUPPORT OF APPELLANT

preclude the Defendant from eliciting evidence or testimony in support of a defense of necessity or justification is hereby **GRANTED**.

Done and ordered in open court this 24th day of October, 1994 in Pensacola, Escambia County, Florida.

/s/FRANK L. BELL
FRANK L. BELL
CIRCUIT JUDGE

Conformed Copies to:

James R. Murray, Assistant State Attorney
Earl D. Lovelace, Assistant Public Defender
Paul Jennings Hill, Pro se, Escambia County Jail

IN THE CIRCUIT COURT IN AND
FOR ESCAMBIA COUNTY FLORIDA

STATE OF FLORIDA

Plaintiff,

vs. Case No. 94-3510-J

PAUL JENNINGS HILL,

Defendant.

V E R D I C T

WE, THE JURY, find as follows as to the charges contained in the Indictment:

COUNT ONE (check only one)

XX GUILTY OF FIRST DEGREE MURDER OF DR. JOHN BAYARD BRITTON AS CHARGED IN THE INDICTMENT (check only one of the following):

XX with a firearm
____ without a firearm

____ GUILTY OF SECOND DEGREE MURDER OF DR. JOHN BAYARD BRITTON, A LESSER INCLUDED OFFENSE (check only one of the following):

____ with a firearm
____ without a firearm

_____ GUILTY OF THIRD DEGREE MURDER OF DR. JOHN BAYARD BRITTON. A LESSER INCLUDED OFFENSE (check only one of the following):

_____ with a firearm
_____ without a firearm

_____ GUILTY OF MANSLAUGHTER OF DR. JOHN BAYARD BRITTON, A LESSER INCLUDED OFFENSE (check only one of the following):

_____ with a firearm
_____ without a firearm

_____ NOT GUILTY

COUNT TWO (check only one)

__XX__ GUILTY OF FIRST DEGREE MURDER OF JAMES HERMAN BARRETT AS CHARGED IN THE INDICTMENT (check only one of the following):

__XX__ with a firearm
_____ without a firearm

_____ GUILTY OF SECOND DEGREE MURDER OF JAMES HERMAN BARRETT. A LESSER INCLUDED OFFENSE (check only one of the following):

_____ with a firearm
_____ without a firearm

_____ GUILTY OF THIRD DEGREE MURDER OF JAMES HERMAN BARRETT. A LESSER INCLUDED OFFENSE (check only one of the following):

_____ with a firearm
_____ without a firearm

_____ GUILTY OF MANSLAUGHTER OF JAMES HERMAN BARRETT, A LESSER INCLUDED OFFENSE (check only one of the following):

_____ with a firearm
_____ without a firearm

_____ NOT GUILTY

COUNT THREE (check only one)

__XX__ GUILTY OF ATTEMPTED FIRST DEGREE MURDER OF JUNE GRIFFITH BARRETT AS CHARGED IN THE INDICTMENT (check only one of the following):

__XX__ with a firearm
_____ without a firearm

_____ GUILTY OF ATTEMPTED SECOND DEGREE MURDER OF JUNE GRIFFITH BARRETT. A LESSER INCLUDED OFFENSE (check only one of the following):

_____ with a firearm
_____ without a firearm

_____ GUILTY OF ATTEMPTED VOLUNTARY MANSLAUGHTER OF JUNE GRIFFITH BARRETT. A LESSER INCLUDED OFFENSE (check only one of the following):

_____ with a firearm
_____ without a firearm

_____ GUILTY OF AGGRAVATED BATTERY OF JUNE GRIFFITH BARRETT, A LESSER INCLUDED OFFENSE (check only one of the following):

_____ with a firearm
_____ without a firearm

_____ NOT GUILTY

COUNT FOUR (check only one)

__XX__ GUILTY OF SHOOTING INTO AN OCCUPIED VEHICLE AS CHARGED IN THE INDICTMENT

_____ NOT GUILTY

SO SAY WE ALL, this 2 day of November, 1994.

FOREPERSON #552

IN THE CIRCUIT COURT IN
AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs. Case Number 94-3510-J

PAUL JENNINGS HILL,

Defendant.

ADVISORY SENTENCE (CHECK ONLY ONE)

__XX__ A MAJORITY OF THE JURY, BY VOTE OF 12-0, ADVISE AND RECOMMEND TO THE COURT THAT IT IMPOSE THE DEATH PENALTY UPON PAUL JENNINGS HILL FOR THE DEATH OF JAMES HERMAN BARRETT.

_____ THE JURY ADVISES AND RECOMMENDS TO THE COURT THAT IT IMPOSE A SENTENCE OF LIFE IMPRISONMENT UPON PAUL JENNINGS HILL WITHOUT POSSIBILITY OF PAROLE FOR THE DEATH OF JAMES HERMAN BARRETT.

DATED THIS THE __3__ DAY OF NOVEMBER, 1994.

FOREPERSON

#552

IN THE CIRCUIT COURT IN
AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA.

Plaintiff,

vs. Case Number 94-3510-J

PAUL JENNINGS HILL,

Defendant.

ADVISORY SENTENCE (CHECK ONLY ONE)

__XX__ A MAJORITY OF THE JURY, BY VOTE OF 12--0 ADVISE AND RECOMMEND TO THE COURT THAT IT IMPOSE THE DEATH PENALTY UPON PAUL JENNINGS HILL FOR THE DEATH OF DR. JOHN BAYARD BRITTON.

_____ THE JURY ADVISES AND RECOMMENDS TO THE COURT THAT IT IMPOSE A SENTENCE OF LIFE IMPRISONMENT UPON PAUL JENNINGS HILL WITHOUT POSSIBILITY OF PAROLE FOR THE DEATH OF DR. JOHN BAYARD BRITTON.

DATED THIS THE __3__ DAY OF NOVEMBER, 1994.

FOREPERSON
#552

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs. CASE NO. 94-3510-1

PAUL JENNINGS HILL,

Defendant.

==========

SENTENCING ORDER

SUMMARY OF OFFENSES AND EVIDENCE

The location of the crimes was the Ladies Center located on North 9th Avenue in Escambia County, Florida. The business of the Ladies Center concerns abortion issues and abortion procedures. The Defendant had been protesting in front of the Ladies Center for approximately the last six months, prior to the crimes. He would carry signs that said "Execute Abortionists and Accessories".

The murders and other crimes occurred on Friday, July 29, 1994, at

approximately 7:30 A.M. On Wednesday, July 27, 1994, the Defendant bought the shotgun and the ammunition he used in these crimes. On Wednesday, July 27, 1994, and Thursday, July 28, 1994, the Defendant went to a public firing range and practiced with the murder weapon (new shotgun) and used some of the ammunition he had just purchased. The Defendant modified the shotgun by sewing a bandoleer on it with four rounds on the butt of the stock. The Defendant placed bandoleers around each ankle and placed shotgun shells in his pockets. The Defendant loaded the shotgun with shells of the maximum. The Defendant had thirty (30) rounds of ammunition to carry out his plan on July 29, 1994. The ammunition was a combination of twelve (12) gauge buckshot. The Defendant used different grades of buckshot: Double-

Aught buckshot, Number One buckshot and Number Four buckshot. The Defendant also used shot referred to as slugs. On July 29, 1994, the Defendant arrived at the Ladies Center approximately one hour prior to Dr. Britton, Colonel Barrett and June Barrett's arrival.

Colonel Barrett and his wife were clinic escorts and picked up Dr. Britton at the Pensacola Airport that morning to transport him to the Ladies Center. Dr. Britton was wearing, as he always did, a bullet proof vest. Upon entering the Ladies Center, through the only entrance or exit, the truck was driven by Colonel Barrett, and Dr. Britton was in the front passenger seat. Mrs. Barrett was in the back cab seat. The Defendant was at the entrance when the victims arrived. The Defendant had secreted the shotgun in some bushes by the entrance. The truck

on entering the Ladies Center had to pass within three or four feet of the Defendant. The Defendant could easily see into the truck as it passed. As Colonel Barrett was exiting his truck, three shots were fired by the Defendant killing Colonel Barrett. Dr. Britton was hit and Mrs. Barrett was also hit. The three shots were fired from inside the entrance to the Ladies Center. After the three shots, the Defendant moved closer to the truck and reloaded his shotgun. The Defendant after getting closer to the truck also repositioned himself to get a better angle on the occupants of the truck. Dr. Britton and Mrs. Barrett could easily see the Defendant shooting at them. The Defendant fired four more shots at and into the truck and at the victims. Approximately thirty seconds elapsed between the first and second

salvo of shots. During this thirty seconds, the Defendant was reloading the shotgun and repositioning himself to get a better angle on his victims. Dr. Britton asked Mrs. Barrett between salvos if Colonel Barrett had a pistol that day. Colonel Barrett had already fallen dead outside the truck on the driver's side from the first three shots. After the shooting ended, the Defendant stood in the parking lot looking over the bodies. The Defendant threw down the shotgun and exited the Ladies Center and started walking South on 9th Avenue. The Defendant was arrested almost immediately. The Defendant told the police upon being placed in the police cruiser that "There will be no babies killed in that clinic today."

The Defendant was appointed the Public Defender's Office to represent him. The

Defendant requested the Court to allow the Defendant to represent himself. The Defendant after a comprehensive Faretta Hearing, was allowed to represent himself with the Public Defender's Office as "Stand-by Counsel".

The Defendant was charged with two counts of 1st Degree Premeditated Murder, a count of Attempted 1st Degree Murder and a count of Shooting into an Occupied Vehicle.

The trial began October 31, 1994, and the Guilty Phase ended on November 2, 1994. The jury deliberated twenty minutes and found the Defendant guilty of all counts as charged. The same jury reconvened on November 3, 1994, for the Penalty Phase. The jury after deliberating approximately four hours, returned a verdict of 12-0 for the death penalty on both counts of 1st Degree

Premeditated Murder.

A Presentence Investigation was ordered and received. The Defendant would not answer any questions to the investigator preparing the Presentence Investigation.

A Presentence Hearing was held on November 30, 1994, and the State of Florida and the Defendant were given the opportunity to present evidence and arguments of Aggravating and Mitigating factors. The State presented argument, but the Defendant failed to produce any evidence or argument, but did make a general statement on the abortion issue. The Court set final sentencing for this date, December 6, 1994.

This Court, having heard the evidence presented in both the Guilty Phase and the Penalty Phase, and having heard further argument at the presentence Hearing, finds as follows:

COUNT 1: MURDER IN FIRST DEGREE OF DR. JOHN BAYARD BRITTON

A. AGGRAVATING FACTORS

1. The Defendant was previously convicted of another capital felony or of a felony involving the use of threat of violence to the person.

This jury convicted the Defendant of Attempted 1st Degree Murder of June Barrett. This involves violence to a person.

This jury convicted the Defendant of Shooting into an Occupied Vehicle. This felony involved violence to a person under the facts of this case.

This jury convicted the Defendant of 1st Degree Premeditated Murder of James Hermann Barrett. This felony involves violence to a person.

This Aggravating factor was proven beyond a reasonable doubt.

2. The capital felony was especially heinous, atrocious, or cruel.

Dr. Britton as he sat in the truck was able to

observe exactly what was happening. He was able to see the Defendant firing at him. Dr. Britton survived the first salvo of three shots that came into the truck and killed Colonel Barrett. Dr. Britton asked June Barrett, who was in the back seat, "Did Jim bring his gun?" Dr. Britton could see the Defendant stalking across in front of him reloading the shotgun. The Defendant was very close to Dr. Britton. The Defendant was looking at Dr. Britton, and Dr. Britton was looking at the Defendant. Dr. Britton was sitting in the passenger side of the truck. There was twenty to thirty seconds between the two salvos. Dr. Britton had twenty to thirty seconds to anticipate and contemplate his death. Dr. Britton could see the Defendant taking aim and was watching his own execution unfold in front of him. This Aggravating factor was proven beyond a reasonable doubt.

3. The capital felony was a homicide and was committed in a cold, calculated, and

premeditated manner without any pretense of moral or legal justification.

The Defendant had told doctors for the past six months that abortionists should be executed. On July 27, 1994, two days prior to the murder, he begins to put his plan into action. The Defendant buys the shotgun and ammunition. On July 27 and 28, 1994, he practices with the shotgun and ammunition. The Defendant modifies the shotgun by sewing a bandoleer on the stock to hold four rounds. The Defendant puts bandoleers and shells around each ankle. He places other shotgun shells in his pockets. The Defendant loaded the shotgun to the maximum. The Defendant has thirty rounds of 12 gauge buckshot. The Defendant was at the clinic one hour before the victims arrived. After he killed the victims, he stood in the parking lot looking over the bodies. The Defendant was looking at what he had accomplished with pride and satisfaction. This Aggravating factor was proven beyond a reasonable doubt.

The State has asked the Court to find one additional Aggravating Factor:

The Defendant knowingly created a great risk of

death to many people.

It is true there were other persons outside the fence of the Ladies Center. "Great Risk to" is not a mere possibility, but a likelihood or high probability.

While the State certainly has an argument that this Aggravating factor could apply, it cannot be said that it was proven beyond a reasonable doubt. Therefore, the Court neither finds nor has it considered this Aggravating factor.

None of the other Aggravating factors enumerated by statute are applicable to this case and none other are considered by this Court. None except as previously indicated in Paragraph 1-3 above was considered in aggravation.

B. MITIGATING FACTORS

STATUTORY MITIGATING FACTORS

The Defendant has no significant history of prior criminal activity.

The Defendant chose not to present any evidence in this case. The State of Florida did not show the Defendant had significant history of prior criminal

activity. This mitigating circumstance does exist, and the Court gave it substantial weight in the weighing process.

The Defendant presented no evidence or argument as to Statutory Mitigating Factors or Non-Statutory Mitigating Factors.

COUNT 2: MURDER IN FIRST DEGREE OF JAMES HERMAN BARRETT

A. AGGRAVATING FACTORS

1. The Defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.

This jury convicted the Defendant of Attempted 1st Degree Murder of June Barrett. This involved violence to a person.

This jury convicted the Defendant of Shooting into an Occupied Vehicle. This felony involved violence to a person under the facts of this case.

This jury convicted the Defendant of 1st Degree Premeditated Murder of Dr. John Bayard Britton. This felony involves violence

to a person.

This Aggravating factor was proven beyond a reasonable doubt.

2. The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.

The Defendant had told doctors for the past six months that abortionists should be executed. On July 27, 1994, two days prior to the murder, he begins to put his plan into action. The Defendant buys the shotgun and ammunition. On July 27 and 28, 1994, he practices with the shotgun and ammunition. The Defendant modifies the shotgun by sewing a bandoleer on the stock to hold four rounds. The Defendant puts bandoleers and shells around each ankle. He places other shotgun shells in his pockets. The Defendant loaded the shotgun to the maximum. The Defendant has thirty rounds of 12 gauge buckshot. The Defendant was at the

clinic one hour before the victims arrived. After he killed the victims he stood in the parking lot looking over the bodies. The Defendant was looking at what he had accomplished with pride and satisfaction. This Aggravating factor was proven beyond a reasonable doubt.

The State has asked the Court to find one additional Aggravating Factor:

> The Defendant knowingly created a great risk of death to many people.
>
> It is true there were other persons outside the fence of the Ladies Center. "Great Risk to" is not a mere possibility, but a likelihood or high probability.
>
> While the State certainly has an argument that this Aggravating factor could apply, it cannot be said that it was proven beyond a reasonable doubt. Therefore, the Court neither finds nor has it considered this Aggravating factor.
>
> None of the other Aggravating factors enumerated by statute are applicable to this case and none other are considered by

this Court. None except as previously indicated in Paragraph 1-2 above was considered in aggravation.

B. MITIGATING FACTORS

STATUTORY MITIGATING FACTORS

The Defendant has no significant history of prior criminal activity.

The Defendant chose not to present any evidence in this case. The State of Florida did not show the Defendant had significant history of prior criminal activity. This mitigating circumstance does exist and the Court gave it substantial weight in the weighing process.

The Defendant presented no evidence or argument as to Statutory Mitigating Factors or Non-Statutory Mitigating Factors.

The Court has very carefully considered and weighed the Aggravating and Mitigating circumstances found to exist in this case, being ever mindful that human life is at stake in the balance. The Court finds, as did the

jury, that the Aggravating circumstances present in this case outweigh the Mitigating circumstances presented.

Accordingly it is,

ORDERED AND ADJUDGED that the Defendant, Paul Jennings Hill, is hereby sentenced in Count One to death for the murder of Dr. John Bayard Britton.

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant, Paul Jennings Hill, is hereby sentenced in Count Two to death for the murder of James Herman Barrett. The Defendant is hereby committed to the custody of the Department of Corrections of the State of Florida for execution of this sentence as provided by law.

Count Two, the 1st Degree Premeditated Murder of James Herman Barrett, shall run consecutive to Count One, the 1st Degree Premeditated Murder of Dr. John Bayard Britton.

MAY GOD HAVE MERCY ON YOUR SOUL.

DONE AND ORDERED in Pensacola, Escambia County, Florida this 6th day of December, 1994.

S\FRANK J. BELL
CIRCUIT JUDGE

Copies furnished to:

Jim Murray, Assistant State Attorney
Paul Jennings Hill, Defendant
Public Defender's Office, Stand-by Counsel

IN THE SUPREME COURT OF FLORIDA

PAUL JENNINGS HILL

Appellant

v.

CASE NO. 84,835

STATE OF FLORIDA

Appellee

==========/

MOTION FOR REHEARING

The Appellant, Paul Jennings Hill, through undersigned counsel, asks this Court to grant a rehearing in this case, and as grounds states:

1. On pages 7 and 8 of its opinion, this Court held that the trial court "complied with both Faretta and rule 3.111(d)" and that "...in this case [the

trial court's] inquiry went beyond the minimal requirements to warn Hill of the particular difficulty of laying a predicate for a defense" [Emphasis added], which comments appear inconsistent to this Court's holding on page 6 "As to the notice and complexity of the case, there is nothing particularly complex about the defense of justification or necessity...".

2. In reaching the above decision, this Court may have overlooked or failed to consider the following:

a. Florida Statutes Section 776.012 (1993) defines the defense of justification:

> [a] person...is justified in the use of deadly force only if he reasonably believes that such force is necessary to prevent imminent death or great **bodily** harm to himself or another. [Emphasis added]

Therefore, the trial court should have explained to the defendant the factual predicate required in order to present evidence that he reasonably believed justified his actions taken to prevent imminent death or great bodily harm to another. However, because of the intricate factual predicate, he was rendered incapable to produce the scientific evidence that at the moment of fertilization a new human being (person) whose sex is determined at that moment, commences life's journey with DNA which is different from the mother and the father, genes, 46 chromosomes, proteins, enzymes, tissues and organs, which remain the same throughout life even, for example, at age 90 and until the death of that human being.

b. This Court's decision, page 6,

equates the defenses of justification as defined by 776.012 with necessity, despite the difference recognized by this Court when it sets forth, page 8, "Section 776.012 is not identical to the defense of necessity". [Emphasis added]. Therefore, these defenses are not synonymous and require separate foundations. The cases articulated by this Court in its opinion all involve the necessity defense (pp. 6-10), leading, for the first time, this Court to hold "that, as a matter of law, legal abortion is not a recognized harm and cannot be used to invoke the necessity defense" (p. 10, citing Roe v. Wade, 410 U.S. 113, 91 S. Ct. 705, 35 L. Ed. 2d 147 (1973)). The cases cited by this Court involve neither the justification defense nor the Florida statute. It would seem that this

Honorable Court is bound by the Florida statutes and not cases from other jurisdictions which do not deal with the justification defense.

Even a defense that is not a "legal defense" is still permissible to establish the *mens rea* of the accused. In the present case, the defense is a legal defense and should therefore be allowed, if for nothing else, to show the state of mind of this accused.

Moreover, the justification defense as provided by Florida Statute and as applicable to this case is not in conflict with Roe v. Wade. Roe is a restraint on the states via the Fourteen Amendment, not on individuals. This Court is not bound by any United States Supreme Court decree concerning when human life begins, because the U.S.

Supreme Court has explicitly left that question unanswered. Roe, 410 U.S. at 159.

c. The Appellant asserts that had he been properly apprised of his rights pursuant to Faretta and rule 3.111(d) he would not have waived his right to counsel. Neither the cases of Faretta v. California, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1978) (grand theft) (cited at p.2 of this Court's opinion) nor Godinez v. Moran, 509 U.S. 389, 399, 113 S. Ct. 2680, 125 L. Ed. 2d 321 (1993) (at p. 7) (shooting bartender, patron, former wife, and himself, with a plea of guilty), apply here as they are straightforward, simple legal issues. In contrast, the instant case involved the need for extensive, intricate preparation in order to present the complex predicate

necessary to support the justification defense, as defined by 776.012. Also, the Appellant stated his need for counsel four times, indicating his waiver was invalid. [Exhibits A, B, C, and D]. He had no intention to, nor would he, waive that defense, which, was the effect of his invalid "waiver" of counsel, as shown below. Lastly, counsel was required on appeal [Exhibit E]:

> However, this is the direct appeal of a capital case. The Court is concerned that it cannot properly carry out its statutory responsibility to review Hill's conviction and sentence of death without the skilled adversarial assistance of a lawyer acting on Hill's behalf, particularly as it concerns the sufficiency of the evidence to convict and the proportionality of the death sentence.

which further indicates that Faretta and rule 3.111(d) were not satisfied below because in addition to the same legal

issues present on appeal which necessarily were present below, the intricate factual issues doubled the requirement of counsel.

d. This Court, respectfully, may have overlooked or failed to consider that its holding, for the first time, set forth in this case was not the law when the Appellant was tried. It is an axiomatic principle of law that any narrowing construction the Court would place on a statute providing an affirmative defense, must be done prospectively--not retroactively. However, the holding amounts to a retroactive application of the Court's first-time ruling on the application of the necessity defense. Again, respectfully, the holding as set forth concerning the necessity defense does not

apply to the justification defense which is at the issue in this case, and additionally such a holding pursuant to Art. 1 § 10 of the U.S. Constitution and Marks v. U.S., 430 U.S. 188, 191-2 (1976), which applies the ex post facto clause [a limitation upon the power of the government to act against individuals] to the Supreme Court because "that right is protected against judicial action by the Due Process Clause of the Fifth Amendment." Therefore this Honorable Court is barred by the Due Process Clause from holding in this case that section 776.012 prohibits the justification defense. This Honorable Court, respectfully, is requested to overrule State v. Thompson, 413 So. 2d 757, 758 (1982).

e. The trial court's failure to

comply with rule 3.111(d) and Faretta prevented the Appellant the opportunity to offer any evidence in support of the justification defense. This is not a case in which the defendant wanted to and did plead guilty, as in Godinez. It is a case where the defendant wanted to offer evidence of the justification defense, but because of an inadequate Faretta and rule 3.111(d) inquiry, he was denied such an opportunity. He simply did not know, as an experienced lawyer did not know in U.S. v. Harrison, 674 F. 2d 185 (3rd Cir. 1982)(lawyer appearing pro se in tax fraud case held not to waive right to counsel as he could not adequately mount a defense), what he in fact was waiving, as he could not waive that which he did not know.

Rules 3.111 (d)(2)-(3)

state:

> A defendant shall not be deemed to have waived the assistance of counsel until...a thorough inquiry has been made into both the accused's comprehension and understanding waiver. [Emphasis added].
>
> No waiver shall be accepted if it appears that the defendant is unable to make an intelligent and understanding choice because of the nature or complexity of the case...[Emphasis added].

Rules 3.111(d)(2)-(3) were violated because there was an inadequate and deficient inquiry into the Appellant's comprehension and understanding of the "particular difficulty of laying a predicate" (p. 7-8) in this case for the justification defense, and therefore the waiver should not have been accepted because he did not make an intelligent and understanding choice based upon the nature and complexity of the case as

mandated by rules 3.111(d)(2)-(3). Further, Faretta at 820, n. 15, admonished that the power to waive the right to the assistance of counsel does not arise mechanically. The benefit of counsel must "knowingly and intelligently" be waived by the defendant. Id. at 836.

Clearly, the Appellant in the instant case did not make an "knowing and intelligent" waiver of his right to the assistance of counsel when his only defense was the justification defense which only could have been presented by an attorney because the factual predicate for the defense minimally required him to conduct an intensive fact based investigation and discovery utilizing intricate legal process, as hereinafter more fully set forth. As the Supreme

Court also held in Godinez--and this Court cited in page 7 of its opinion--the defendant must demonstrate his competence to 'waive the right,, not the competence to represent himself." Paul Hill did not validly waive his right to counsel because he did not know what he was waiving.

Faretta, page 819, addresses that issue of compulsory process and the right to put on a defense. "...[T]he right in an adversary criminal trial to make a defense as we know it", in accordance with both Faretta and the more elaborate standard as set forth by rule 3.111(d), Godinez, supra, at a minimum, required the trial court explain to the Appellant, in the "particular difficulty of laying a predicate for a defense" (p. 7, 8); He had to understand the nature of the

predicate needed to introduce evidence of the justification defense. [For example, laying the predicate may have necessitated: subpoena the records on July 29, 1994; determine if any person, as a result of what happened on July 29, changed her mind concerning the termination of life and a person remains alive as of this day; subpoena the records of the Center to determine whether or not broken appointments were the result of people being dissuaded from terminating a life; subpoena duces tecum those records to Court, if helpful; subpoena the records of the Center to determine if validly licensed; file discovery against the Center to ascertain all the names, addresses and phone numbers of employees for the past prior one year, including those who take part

in the actual termination proceeding; interview each such person as to the responsibilities connected with employment; determine from said persons any other fact witnesses; subpoena those persons; subpoena records keeper as to personnel in any way connected with abortion procedure; interview those people, determine if any illegal abortions took place; take a statement from favorable persons; prepare subpoena duces tecum for said persons; file discovery as to the persons who avail themselves of the services at the Center; interview those persons; subpoena those persons if testimony germane; interview, take statements from and subpoena scientific/secular experts concerning the commencement of a human being].

f. This Court's ruling on page 14 of

its opinion "the trial judge properly rejected the proposition that...Hill acted under a pretense of moral justification", is, respectfully, in error, particularly in view of the clear reading of section 776.012 Florida Statutes (1993):

> However, he is justified in the use of deadly force only if he reasonably believes that such force is necessary <u>to prevent imminent death or great bodily harm to himself or another...</u> [Emphasis added]

and when contrasted with the opinion of the Honorable Harry Anstead in which that issue is studiously addressed. The statute permits the Appellant in the instant case to produce evidence before the trier to attempt to prove that he was acting in the defense of "another".

g. This Court has also concluded,

page 10, that "legal" abortions cannot constitute a "harm". Respectfully, "harm" as used by this Court in citing Wichita v. Tilson, 855 P.2d 911, a necessity case, refers to a person acting in an attempt to prevent some greater, general "harm" to society. For this reason, Wichita v. Tilson defines "harm" for use of the necessity defense as a "legal harm or evil as opposed to a moral or ethical belief of the individual defendant." However, the justification defense, section 776.012, plainly states that a person is justified to prevent great bodily harm to another. Therefore, the Appellant should have been permitted to present all evidence supporting that he "reasonably believed" that his action was "necessary to prevent imminent death or great bodily harm to...another." The

statute and Gilbert v. Florida, 487 So. 2d 1185 (Fla. App. 4th Dist. 1986), permit the defense of justification if evidence was introduced to satisfy the factual predicate to support that defense. Further, the defendant, because he was not permitted counsel, was not able to ascertain if, in fact, the abortions to be performed at the facility were or were not "legal".

h. This Court may have misstated (p. 2, 4), that the Appellant "reloaded his gun" (Exhibit F) before shooting and killing Dr. Britton, as respectfully, there is no evidence for that finding.

i. The Court may have erred at Page 13, note 7, in holding that the motion in limine was directed only toward the guilt phase of the trial, not the penalty stage of the trial. Respectfully, record on

appeal, pages 114, 115 and 116 (Exhibit G) indicates that the motion involved the entire trial as shown by transcript pages 649, 720-725, (Exhibit H) which preclusion involved both aspects of the trial, and, the motion in limine emphasized the exclusion of "political and religious views" (Exhibit G).

j. The Court may have erred, (p. 12) when it states "The argument that the jury was permitted to see certain exhibits not in evidence is not supported by the record", transcript p. 497, 498, 505, 630-635, when the trial judge stated the mannequins were still in Court and not exhibits, and, the Court may not have considered, (p. 12) that a pro se defendant is incapable of the requirement of setting forth objections.

WHEREFORE, for the reasons presented, Paul Jennings Hill asks this Court to grant rehearing in this case.

RESPECTFULLY SUBMITTED,

/S/

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IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY FLORIDA

STATE OF FLORIDA,

vs. CASE NO. 94-3510

PAUL JENNINGS HILL,

Defendant.

---/

Proceedings held in the above-styled cause before the Honorable Frank L. Bell, Circuit Judge, on the 30th day of November 1994, at the M.C. Blanchard Judiciar Building, 190 Governmental Center, Pensacola, Florida.

APPEARANCES:

FOR THE STATE: JAMES R. MURRAY, ESQUIRE
Assistant State Attorney
190 Governmental Center
Pensacola, Florida 32501

RAYMOND L. MARKY, ESQUIRE
Assistant State Attorney
301 South Monroe Street

Tallahassee, Florida 32399

FOR THE DEFENDANT: MR. PAUL J. HILL
Pro se

AS STANDBY COUNSEL: J. PETER FRANCE, ESQUIRE
Assistant Public Defender
190 Governmental Center
Pensacola, Florida 32501

BRENDA F. SANSOM, RPR-CM, CMRS
CIRCUIT COURT REPORTER

PROCEEDINGS

THE COURT: Mr. Murray.

MR. MURRAY: Good afternoon, Your Honor. Is the Court ready for the State to proceed?

THE COURT: Sure. Mr. Hill, are you ready to proceed?

MR. HILL: Your Honor, I have a motion to return personal property. During the arrest and subsequent investigation, there were several items seized that were unrelated to the prosecution or any criminal activity, and I would like to request that those items be returned. Namely, it was a personal computer and monitor and some related items as well as a couple of cassette tapes that operate an answering machine.

THE COURT: Were these taken during a search warrant or something?

MR. MURRAY: That's correct, Your Honor. Also the State has not been served notice of a motion, we have not had a copy of a motion. It's out of order at this time.

THE COURT: All right. That's fine, but

let me try to kind of get to the heart of it.
Have you filed a written motion on it, sir?
MR. HILL: No, sir, I was told that

wouldn't be necessary.
2 THE COURT: Well, what I would like for you
3 to do so everybody will be -- it might not be a
4 problem.
5 MR. HILL: Yes, sir.
6 THE COURT: I don't know. What I suggest
7 you do, sir, if you'll file a written motion
8 requesting return of that property because it's no
9 longer relevant to the prosecution, it wasn~t
10 introduced into evidence, it's personal property
11 that was taken ever when it was taken and serve a
12 copy of it on the State, the State can then say we
13 object to it or we don t object. If there's no
14 objection, there's no problem. If there's an
15 objection, what I can do is then set it for a
16 hearing. I'll be happy to hear what you have got
17 to say on it. I'll be happy to hear what the
18 State has got to say on it. I ll make a decision.
19 MR. HILL: Thank you, sir.
20 THE COURT: Okay. Is the State ready to
21 proceed with this presentencing

hearing?
22 MR. MURRAY: Yes, Your Honor.
23 THE COURT: Mr. Hill, are you ready to
24 proceed?
25 MR. HILL: Yes, sir.

THE COURT: What do you want to proceed on first?

MR. MURRAY: Your Honor, at this time we would move the Court to go ahead and make the Faretta inquiry of the defendant since it's a critical stage.

THE COURT: Right. What I would like to do at this point, Mr. Hill, it's the same thing that we did prior to trial, the same thing that we did I think every day during the trial, is prior to trial we had a fairly long dialogue concerning you wanting to represent yourself in this particular case. I asked you a lot of questions, you responded to the questions -- you responded to the questions, most of them anyway, and based upon your responses I made a ruling that under the Constitution of the United States that you had a right to represent yourself as the United States Supreme Court has issued its ruling and in the case of Faretta, it's called a Faretta case

it's called a Faretta hearing.
During the trial I also asked you if you still wanted to represent yourself, if your answers would be the same if I asked you each and every one of those questions that I asked you at

Faretta hearing. You told me that your answers would be the same and you still wanted to represent yourself. Again, I'm going to make that same inquiry and ask you -- do you remember the questions, all the questions basically that I asked you during the Faretta hearing?

MR. HILL: Yes, sir, in essence.

THE COURT: Would your responses be the same if I were to ask those questions over again?

MR. HILL: Essentially, yes, sir.

THE COURT: Is it still your desire to represent yourself in this matter rather than have an attorney represent you?

MR. HILL: It is.

THE COURT: Is the State ready to go forward?

MR. MARKY: The State is ready, Your Honor.

THE COURT: Okay. Is the State going to present any evidence or just present argument?

MR. MARKY: The only thing that the State would like to move in for the record, and I assume

it has been so moved, is the presentence investigation report itself.

THE COURT: Yes, the presentence

IN THE CIRCUIT COURT

IN AND FOR ESCAMBIA COUNTY, FLORIDA

STATE OF FLORIDA,

vs. CASE NO. 94-3510

PAUL JENNINGS HILL,
Defendant.

_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ /

Proceedings held in the above-styled cause before the Honorable Frank L. Bell, Circuit Judge, on the 6th day of December 1994, at the M.C. Blanchard Judicial Building, 190 Governmental Center, Pensacola, Florida.

APPEARANCES:

FOR THE STATE: JAMES R. MURRAY, ESQUIRE
Assistant State Attorney
190 Governmental Center

Pensacola, Florida 32501

FOR THE DEFENDANT: MR. PAUL J. HILL
Pro se

ALSO PRESENT: EARL D. LOVELESS, ESQUIRE
J. PETER FRANCE, ESQUIRE
Assistant Public Defenders
190 Governmental Center
Pensacola, Florida 32501

EMILY C. UNDERWOOD, RPR
CIRCUIT COURT REPORTER

P R O C E E D I N G S

THE COURT: Okay. The State has handed up a -- looks like a sentencing -- sentencing guideline score sheet as it relates to the -- the attempted first degree murder and also as it relates to shooting into an occupied vehicle. You have received a copy of that, Mr. Hill?

MR. HILL: I was handed one a few seconds ago, sir.

THE COURT: Do you want to have an opportunity to go over the guideline scoresheet with your standby counsel?

MR. HILL: Not necessarily.

THE COURT: Okay. Well, it looks like this has been prepared, and it comes down to a total of 156 points, 156.6 points. And under the guidelines as -- not the two first degree murder counts, but under the guidelines if the -- if the total points are greater than 52, then there must be a state prison sentence. 156.6 points under the sentencing guidelines, you then take away 28

22points and it comes to a state prison sentence in
23months of 128.6 months. From that you then either
24increase it or decrease it by 25 percent, which
25means that the recommended sentence on the two

counts, which is the attempted first degree murder and the shooting into an occupied vehicle, the minimum state prison sentence in months would be 496.45. The maximum state prison sentence in months would be 160.75 months. Is that the State's understanding?

MR. MURRAY: That is correct, Your Honor.

THE COURT: I would ask you, Mr. Hill, if you agree or disagree with the accuracy of the scoresheet?

MR. HILL: Obvioulsy I can't comment because I have just been handed it a few seconds ago.

THE COURT: Sir, I will give you as much time as you need to go over the scoresheet with your standby counsel who deals with these scoresheets every day. I will give you a chance to go over it with him to see whether or not you feel that the scoresheet is accurate, because we do want it to be accurate.

MR. HILL: Right. Well, I can just ask

them if they think it is accurate. Just give me a moment.

THE COURT: Sir, I will give you as much time as you need to discuss it with them.

(Discussion among Mr. Hill, Mr. Loveless and Mr. France off the record.)

MR. HILL: Yes, sir. My counsel tells me that they believe it is accurate.

THE COURT: Okay. All right. Do you believe that it is accurate based upon their representation to you?

MR. HILL: Yes, sir.

THE COURT: The State has also handed up a -- two civil restitution lien orders, one concerns the estate of Dr. John Britton and the other concerns June Barrett as the -- as the victim. What does the State want to say on that?

MR. MURRAY: Judge, I had these prepared because of the statutory requirement based on the recent legislative enactments, and I'm simply providing it to the Court and to Mr. Hill in the event the Court feels that it needs to enter the order pursuant to the statute.

THE COURT: Have you had a chance, Mr. Hill, to look at those two civil restitution lien

22orders? I assume you got a copy of them.
23 MR. HILL: No, sir, I have not. I was
24handed one a few seconds ago or perhaps two
25minu es ago.I have not had a chance to look at

them.
THE COURT: Again I will give you the same
opportunity. If you would like to confer with
your attorneys about those, I will be -- give you
the necessary time to do that. If you would like
to do it.
MR. **HILL:** All right. Yes, sir.
(Discussion among Mr. Hill, Mr. Loveless
and Mr. France off the record.)
MR. HILL: Well, Your Honor, my counsel
here believes there is an inaccuracy in this
order, as well they believe it's
unconstitutional, but they are also -- being an
inaccuracy as well.
THE COURT: Let me ask you this and let's
go back and kind of revisit the Faretta hearing
that we had initially several months ago in this
case. Whenever you asked to represent yourself,
we had a -- a separate hearing in which you were
asked many questions about your desire to
represent yourself, and you responded to those
questions. And after that hearing was held, an
order was entered allowing you to

represent
yourself and, of course, under our
criminal Rules
of procedure, we are obligated at each
and every

proceeding after that to make sure that you wish to continue to represent yourself or whether or not you want counsel to represent you.

During the course of the trial I continued to do that, and this is another proceeding today, and I would ask you if I were to ask you those same questions again, would generally speaking would your responses be the same?

MR. HILL: Yes, sir.

THE COURT: Do you want to continue to represent yourself in this matter?

MR. HILL: That is correct.

THE COURT: What does the State want to say in relation to Mr. Hill's response on the restitution lien orders?

MR. MURRAY: Judge, I don't know what his objection is or what the claimed inaccuracy is.

THE COURT: I think one of the claims that I heard him state -- he did not make a claim, he did not say as to the inaccuracies. He said based upon what advice he had just received from his attorneys, that he questions the constitutionality

NOTICE: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION IN THE PERMANENT LAW REPORTS. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL.

Paul Jennings HILL, Appellant,
v.
STATE of Florida, Appellee.
No. 84,838
Supreme Court of Florida
June 22, 1995.

Paul Jennings Hill, pro se, Starke FL; and Nancy A. Daniels, Public Defender and W.C. McLaine, Assistant Public Defender, Second Judicial Circuit, Tallahassee, FL, for Appellant
Robert A. Butterworth, Attorney General; and Carolyn Snurkowski and Richard B. Martell, Assistant Attorneys General, Tallahassee, FL, for Appellee

PER CURIAM.
*1 Appellant Paul Jennings Hill was charged with first-degree murder in Escambia County. Upon his motion, Hill was permitted to represent himself at the trial, together with standby counsel. Hill was convicted and sentenced to death. His appeal is now pending in this Court, and he is represented by the public defender. Hill has now moved for leave to represent himself on appeal and to discharge the public defender's office as appellate counsel. We have jurisdiction under article V, section 3(b)(1) of the Florida Constitution. Pursuant to our directive, the Honorable Elzie S. Sanders, Circuit Judge of the

Eighth Judicial Circuit of Florida, conducted a hearing on Hill's motion. Judge Sanders found that Hill comprehends his constitutional right to assistance of counsel in the appeal process and has knowingly and voluntarily waived his right to assistance of counsel in the appeal. Judge Sanders recommended that Hill be permitted to represent himself but that the public defender continue in the case as "next friend of the court."

The principle of Faretta V. California, 422 U.S. 806, 95 S.Ct. 2525, 46 L.Ed.2d 562 (1975), concerning self-representation is not applicable to appeals. Indeed, the Faretta court cited with approval Price v. Johnson, 334 U.S. 266, 68 S.Ct. 1049, 82 L.Ed. 1356 (1948). Faretta, 422 U.S. at 816. In Price, the United States Supreme Court stated:

The discretionary nature of the power in question grows out of the fact that a prisoner has no absolute right to argue his own appeal or even to be present at the proceedings in an appellate court. The absence of that right is in sharp contrast to his constitutional prerogative of being present in person at each significant stage of a felony prosecution and to his recognized privilege of conducting his own defense at the trial.

334 U.S. at 284 (citation and footnote omitted).

The transcript of the hearing clearly supports Judge Sanders' findings with respect to Hill's competency and knowing and voluntary waiver of assistance of counsel. However, this is the direct

appeal of a capital case. The Court is concerned that it cannot properly carry out its statutory responsibility to review Hill's conviction and sentence of death without the skilled adversarial assistance of a lawyer acting on Hill's behalf, particularly as it concerns the

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sufficiency of the evidence to convict and the proportionality of the death sentence. As this Court stated in Klokoo v. State, 589 So.2d 219 (Fla. 1991), when the defendant moved to dismiss the appeal from his death sentence.

[C]ounsel for the appellant is hereby advised that in order for the appellant to receive a meaningful appeal, the Court must have the benefit of an adversary proceeding with diligent appellate advocacy addressed to both the judgment and the sentence.

Accordingly, counsel for the appellant is directed to proceed to prosecute the appeal in a genuinely adversary manner, providing diligent advocacy of appellant's interests. The foregoing rulings are made without prejudice to the right of appellant to request leave to file a pro se supplemental brief setting forth his personal positions and interest with regard to the subject matter of this appeal.

*2 Id. at 221-22 (quoting order on motion

to dismiss appeal). Thus, we deny Hill's motion. Because this is a capital case, we will permit Hill to file a pro se supplemental brief on or before the time within which his attorney's brief shall be filed.

It is so ordered.

GRIMES, C.J., and OVERTON, SHAW, KOGAN, HARDING, WELLS and ANSTEAD, JJ., concur.

END OF DOCUMENT

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THE COURT: You do have access to other officers of the court, practicing attorneys from other jurisdictions as well as the state of Florida? Are there any in the state of Florida?

MR. HILL: Yes, I have access to lawyers in Florida.

THE COURT: You know, the location is not important, but you do routinely -- or you have access to other attorneys that could counsel with you and advise you or address certain questions that you have in reference to the appellate process?

MR. HILL: That's correct, sir.

THE COURT: What I'm going to do is give Mr. Martell the opportunity to address any questions that he might have, so that we can properly establish the record, so that the Florida Supreme Court

[Handwritten]
If jury recommends "Life Imprisonment With Out Parole", does the law allow in future years the defendant can be paroled?